

TESTIMONY OF PETERSON ZAH  
ON BEHALF OF THE NATIONAL ASSOCIATION  
OF INDIAN LEGAL SERVICES  
TO THE  
SENATE COMMITTEE ON INDIAN AFFAIRS  
REGARDING S. 1508 ON SEPTEMBER 29, 1999

INTRODUCTION

Chairman Campbell, Vice Chairman Inouye and distinguished members of the Committee, my name is Peterson Zah, I am a member of the Navajo Nation, and I am presently working as a special advisor to the President of Arizona State University in Tempe, Arizona. I am honored to be invited to testify on S. 1508, the "Indian Tribal Justice System Technical and Legal Assistance Act of 1999." My testimony is on behalf of the National Association of Indian Legal Services (NAILS) and in support of this bill.

As some of you may know, prior to my years as President of the Navajo Nation, I served as the Executive Director of DNA Peoples Legal Services on the Navajo Reservation. I know first-hand the importance of the work of Indian legal services in the lives of Indian people and in the development of tribal law and judicial systems. That is why I am always eager to have the opportunity to speak up for Indian legal services and why I am pleased to be here in support of this bill.

Let me begin by providing some background on these 30 small Indian legal services organizations that are out there everyday helping individuals and developing the foundation for modern tribal jurisprudence.

Indian legal services programs were first created out of the legal arm of the Office of Economic Opportunity in the mid-1960's. Eight programs were established in the 1960's, and approximately 25 more in the 1970's. Funding was shifted to the Legal Services Corporation (LSC) with its creation in 1974. To recognize the significance of this fact, it was the first real time in the 225-year history of this country that Native American people had any meaningful access to legal representation by other than government attorneys in a few, random cases. Today, these small programs, funded primarily by LSC, continue to provide fundamental, bread-and-butter legal representation to individual Indian people, and small tribes, throughout the United States.

The importance of Indian legal services programs has been recognized before by this Committee. In a June 1981 Report, 97<sup>th</sup> Congress, First Session, entitled “Analysis of the Budget Pertaining to Indian Affairs Fiscal Year 1982,” at page 22, this Committee reported that the ILS programs provide “exceptional services,” to Indian Country, and that attorneys working with ILS programs had become “. . . an integral part of the tribal legal and judicial processes. . .” and “. . . contributed greatly to the development of the on-reservation judicial systems.” [Emphasis added.]

For over thirty years, these programs have been providing nationwide essential, basic legal services to individual Native Americans and tribes whose members fall within the federal poverty guidelines. A cornerstone of the work of ILS programs over these three decades has been assisting tribes in the development and evolution of tribal justice systems, including tribal courts. This work has included, to name but a few of the various general categories: the development of written codes on tribal law, written codes on practice and procedure in tribal courts, selection and training of tribal judges, tribal-state court judge training on common legal areas of interest, development of tribal court lay advocate programs and the training of lay advocates to staff those programs, and the development of tribal peacemaking (traditional alternative dispute resolution) courts and systems.

For a more in-depth, comprehensive look at the history and work of Indian legal services programs, we will be submitting for the record copies of a study entitled “Legal Needs and Services in Indian Country: 1998 Report to the Legal Services Corporation,” by Eric Dahlstrom, Esq. and Randolph Barnhouse, Esq.

As that Report will demonstrate, Indian legal services organizations are all too often the only game in town, the only organizations available on the reservations themselves, on a daily basis, to provide independent, community based legal assistance to individuals and tribal court systems. Allow me to give you a very small sampling of what I mean.

#### DNA Legal Services of Arizona, New Mexico and Utah

Back in my home country on the Navajo Reservation DNA has continued its history of contributing to the evolution of tribal court systems within its service area through code development and judicial and law enforcement training. In 1993 the Navajo Nation Council

passed the Domestic Abuse Protection Act (DAPA). A DNA attorney drafted the DAPA and guided it through the tribal legislative process. The Act allows victims of domestic abuse to apply to the courts pro se for protection from their abuser, possession of any home, child custody and support, and a broad range of other remedies. In 1995, DNA established its Native American Family Violence Prevention Project (NAFV Project), with the initial goal of educating Navajo Nation courts, legal practitioners and others about the DAPA. The NAFV Project conducted trainings for judges, court personnel, prosecutors, law enforcement, and social services across the Navajo Nation in three states. In 1996, DNA also drafted and secured passage of the Hopi Nation's domestic abuse prevention act which contains provisions similar to the Navajo Nation law.

DNA's Youth Law Project (YL Project) has also been actively working to help Navajo and Hopi communities deal with violence and to improve the legal system's response to that violence. DNA has taken a leadership role in a broad based coalition working on these issues. The coalition has been invited to comment on revisions to the Navajo Nation Children's Code. In the future, the coalition hopes to pursue funding to develop a criminal code for the Navajo Nation dealing with youth violence, and to train courts, prosecutors, law enforcement, social services, and other legal personnel on the code and on how to respond to crimes committed by youths.

In the past, the YL Project has conducted a Street Law program at Navajo high schools, developing a Street Law curricula, and bringing DNA lawyers and others from the community into the high schools to give students a hands-on view of how the law affects their lives. More recently, the YL Project has assisted the Window Rock and Tuba City, Arizona communities to institute Teen Courts. These types of innovative, community based programs are responsive to critical local needs, and they help create a healthy and stable environment which is then attractive to business and other community development.

Finally, DNA has also worked with the courts of the smaller tribes such as Hualapai, Havasupai, and Yavapai Apache to provide lay advocate training for the more efficient operation of their tribal court systems.

## CONCLUSION

Mr. Chairman and members of the Committee, unfortunately I do not have time today to talk about the fine work of other Indian legal services programs with tribal courts and tribal communities. I have, however, included a few detailed descriptions at the end of my testimony. I hope I have not done a disservice to these and all the other Indian legal services programs by giving you such a limited snapshot of some of the work they have done in recent years. I simply wanted to give you, very briefly, some sense of the vital role these offices play in the development and provision of legal services on the reservations.

It is this type of committed, on-site work, done day-in and day-out that creates a climate of trust in our tribal judicial systems. In that environment of trust and confidence our Indian communities can grow and thrive.

This modest bill, S. 1508, will help contribute to that growth by expanding the opportunities for Indian legal services and tribal court membership organizations to contribute to the work the tribes themselves are doing in this area. It is essential that such organizations, outside of tribal government but committed to tribal justice, continue to help shape the development of our tribal justice systems. It makes our systems healthy and responsive, and that is good capacity building.

Before I close, I want to mention briefly the support for Indian legal services that comes from tribal governments, intertribal organizations and tribal judiciaries. I will do that by referring you to the letters of support that were attached to the NAILS testimony presented to this Committee as part of the record of your Hearing on June 3, 1998, on the Initiative on Law Enforcement in Indian Country.

Although these letters and Resolutions of support were presented to the Committee in the context of that initiative, their general theme is germane to S. 1508. That theme is one of encouragement and support for Congress to create the opportunity for supplemental funding for ILS in order to enhance the capacity of tribal courts in a meaningful, low cost way. I urge you to go back and see the strong words of those Resolutions and letters.

As Chairman Campbell stated in introducing S. 1508, this bill is intended to complement, not substitute direct federal support for tribal governments in the area of tribal justice. The bill would authorize the Attorney General to award grants to national or regional tribal justice system

organizations and associations and to non-profit entities which provide legal assistance services for tribes and tribal members for the purpose of improving tribal judicial systems through training, technical assistance and civil legal and criminal assistance. The bill specifically includes our 30 Indian legal services programs as eligible entities to whom the Attorney General may award grants for civil legal and criminal assistance programs by the references to non-profit entities which provide legal services pursuant to federal poverty guidelines. The bill provides that these grants would be conditioned on the availability of appropriations. As you may know, Indian Legal Services programs have been very mindful about not competing with tribal courts for operating funding, and so we appreciate the Committee's intent in the bill that the Attorney General would, subject to available appropriations, provide funds for these grants from within existing Department of Justice programs and outside of the tribal courts program.

I hope I have given you good indication of why that is right, and how it occurs. I commend the Committee on its foresight in appreciating how these organizations are key parts of our judicial development. By moving this bill into law you will, in a modest way, be contributing to a healthy jurisprudence in Indian Country; and that, as you well know, is good for everyone.

Thank you again for this opportunity to speak to you today. I am happy to respond to any questions you might have.

## EXAMPLES OF THE TRIBAL COURT WORK OF OTHER SELECTED INDIAN LEGAL SERVICES PROGRAMS

### Indian Pueblo Legal Services of New Mexico

Indian Pueblo Legal Services (IPLS) has been assisting the Pueblos in the development of tribal domestic violence codes. They have organized working groups within the Pueblos which are responsible for identifying the substantive code provisions and procedures to be enacted by each Pueblo, given the unique nature of each tribal government and tribal court. IPLS has facilitated the discussions and drafted the codes. IPLS provided this technical assistance to eight Pueblos under a contract with the Eight Northern Indian Pueblos Council and to three Pueblos under a Violence Against Women Act grant. The working groups within the Pueblos are responsible for ensuring that the Tribal Council considers and adopts the codes.

## Michigan Indian Legal Services

Michigan Indian Legal Services (MILS) has represented several Michigan tribes in securing federal recognition. MILS' work with these tribes did not stop there, however. For many years, MILS has been actively engaged in the assistance of the tribes in the development of their tribal court systems, including code development and training of tribal judicial personnel. Two recent projects include drafting of a juvenile code and a peacemaking code for the Little River Band of Ottawa Indians.

## Dakota Plains Legal Services of South Dakota

Dakota Plains Legal Services (DPLS) staff has met with tribal court judges and court personnel from throughout South Dakota to establish court procedures, improve working relationships, discuss code revisions and do-it-yourself kits for simple procedures such as non-contested divorces. DPLS staff has also been involved in peer mediation training with the tribal courts in their service area.

## North Dakota Legal Services

Since its beginning in 1971, North Dakota Legal Services has provided representation to low income Native Americans in the Fort Berthold Tribal Court. NDLS has handled a wide variety of cases, attempting to feature a high volume of routine cases together with three or four impact cases each year. Included among those thousands of cases were impact decisions in the area of domestic violence jurisdiction (*Stretches v. Stretches*), individual Tribal members rights (*Bordeaux v. Wilkinson*), tenants rights (*Chase v. Fort Berthold Housing Authority*), juvenile detention and tribal jails (*Fitzsimmons on behalf of KMR*), and repossession protection, debtors rights, criminal due process and Tribal Court jurisdiction.

## Wisconsin Judicare

Between 1996 and 1998 Wisconsin Judicare was actively involved in a statewide Tribal Lay Advocate Training Project. This project resulted in 20 tribal individuals receiving a certification from the Wisconsin Tribal Judges Association (WTJA). With this certification, advocates may apply to practice in one or more tribal courts in Wisconsin. The impetus for this

project came from the fact that while the tribal courts are expanding in their scope of services, there has been no similar increase in the availability of attorneys to represent individuals in those growing courts.

When two new tribal courts opened their doors in Wisconsin in 1996, Judicare's Indian Law Office, at the request of the tribal courts, presented a seminar for state and tribal court judges entitled, "Tribal/State Legal Relations: What Judges Need to Know." The Wisconsin Department of Justice co-sponsored the event. The purpose was to establish a good, cooperative understanding and working relationship between the state and tribal courts so justice would flow evenly for everyone with a minimum of jurisdictional problems. Approximately 30 state and tribal court judges attended the session which covered a variety of jurisdictional issues. The seminar received high marks in the concluding evaluation, with judges consistently suggesting that similar events be presented in the future.

#### Idaho Legal Aid Services

Idaho Legal Aid Services (ILAS) was instrumental in creating the Nez Perce Peacemaker/Access to Justice Project, which worked in conjunction with the Nez Perce Tribal Court to provide mediation services and pro se pleading forms to individuals bringing actions in the Tribal Court. Law students and Tribal elders engaged in intensive cross-cultural mediation training and then collaborated in mediation of selected tribal court disputes. In addition, ILAS staff drafted legal codes for several other Idaho tribes and contributed to the development of jurisprudence in the tribal courts by actively engaging in representation of individual tribal members in those court systems.

#### Native American Program of Oregon Legal Services

The Native American Program of Oregon Legal Services (NAPOLS) has done a substantial amount of Tribal Court development work over the past decade. For instance, NAPOLS assisted the Confederated Tribes of Grand Ronde Tribe in establishing their Tribal Court, which has been up and running since 1991. NAPOLS drafted the Tribal Court Ordinance, conducted workshops for the Tribal Council, assisted in the hiring of a tribal court judge, did lay

advocate training, did training for the Tribal Social Services department on court procedures, and drafted court forms for use by the Tribal Court. Most recently NAPOLS assisted the Tribal Court judge in creating computerized form court orders that complied with PL 96-272, to ensure the payment of foster care maintenance monies for Tribal foster care providers. NAPOLS has also appeared numerous times in the Grand Ronde Tribal Court.

NAPOLS has done very similar work for the Coquille Indian Tribe. The Coquille Tribe was restored in 1989. Their Constitution, which NAPOLS assisted in drafting, was adopted in 1991 and required the establishment of a tribal court. NAPOLS has conducted a series of tribal court workshops for the Tribal Council, presented a workshop that involved local county judges and child protective services workers on the ICWA and tribal courts, drafted the Tribal Court Ordinance, assisted in the hiring of a judge, drafted substantive ordinances that will be applied by the Court. The Court officially convened for the first time in May of 1998.